

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-129815-06

Date: OCTOBER 12, 2006

LEGEND:

| | |
|-----------------|---|
| Donor | = |
| Spouse | = |
| Son | = |
| Daughter | = |
| Trust | = |
| Date | = |
| Year | = |
| <u>x</u> shares | = |
| Corporation | = |
| Attorney A | = |
| Attorney B | = |
| Law Firm | = |
| Accounting Firm | = |

Dear :

This is in response to your representative's letter of June 7, 2006, requesting an extension of time under section 2642(g) of the Internal Revenue Code and section 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) exemption to a transfer to the Trust.

The facts and representations submitted are summarized as follows. On Date, before December 31, 2000, Donor created the Trust, an irrevocable trust, for the primary benefit of Spouse, Son, Daughter, and the issue of Son and Daughter. At the same time, Donor transferred x shares of Corporation to the Trust.

During the planning and execution stage of the gift, Donor's and Spouse's attorneys, Attorney A and Attorney B of Law Firm, advised Donor and Spouse of the GST nature of the Trust. Accounting Firm was engaged to prepare the Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Returns, with review by Law

Firm. On their gift tax returns filed for Year, Donor and Spouse consented to treat the gift as made one-half by each pursuant to section 2513. However, the returns, as filed, did not include allocations of GST exemption to the gift. Attorney A recently discovered the error while reviewing and updating Donor's and Spouse's estate plans.

There have been no additions made to the Trust. An extension of time is requested to allocate Donor's and Spouse's available GST exemption to the gift made on Date to the Trust. No taxable distributions or taxable terminations as defined under section 2612 have occurred with respect to the Trust. Donor and Spouse have not yet used any of their GST exemption.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the donor's spouse shall, for purposes of the gift tax, be considered as made one-half by the donor and one-half by the donor's spouse. Section 2513(a)(2) provides that paragraph (a)(1) shall apply only if both spouses have signified their consent to the application of paragraph (a)(1) in the case of all gifts made during the calendar year by either while married to the other.

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term "generation-skipping transfer" means a taxable distribution, taxable termination, and a direct skip.

Section 2631(a), as in effect at the time of the transfer, provides that (for purposes of the GST tax) every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual to any property with respect to which such individual is the transferor.

Section 2632(a) provides that any allocation by an individual of GST exemption under section 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for the individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Under sections 26.2632-1(b)(2)(i) and (ii) of the Generation-Skipping Transfer Tax Regulations, an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709. Except as otherwise provided, an allocation of GST exemption is effective as of the date of any transfer as to which the Form 709 on which it is made is a timely filed return (a timely allocation).

Section 2642(b)(1) provides that if the allocation of GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by section 6075(b) for such transfer, the value of such property for purposes of section 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in section 2642(b)(1) or (2).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

Section 2652(a)(2) provides that if, under section 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the spouse of the individual, the gift shall be so treated for purposes of the GST tax.

Section 26.2652-1(a)(4) provides that in the case of a transfer with respect to which the donor's spouse makes an election under section 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513. The donor is treated as the transferor of one-half of the value of the entire property.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation or notice published in the Internal Revenue Bulletin. In accordance with section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) under the provisions of section 301.9100-3.

Section 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax

professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Spouse is treated for GST purposes as the transferor of one-half of the entire value of the property transferred to the Trust by Donor, regardless of the interest Spouse is actually deemed to have transferred under section 2513. For GST purposes, Donor and Spouse are each treated as the transferor of one-half of the value of the entire property transferred to the Trust. Therefore, Donor is granted an extension of time of 60 days from the date of this letter to make an allocation of her available GST exemption with respect to the transfer to the Trust. In addition, Spouse is granted an extension of time of 60 days from the date of this letter to make an allocation of his available GST exemption, with respect to the transfer to the Trust. The allocations will be effective as of the date of the transfer. The inclusion ratio of the Trust will be determined based on the value of the transfer to the Trust as determined for federal gift tax purposes and the amount of exemption allocated to the Trust. Further, the value of the transferred shares as of the date of the original transfer to the Trust will be used in determining the amount of Donor's and Spouse's GST exemption to be allocated to the Trust.

Donor and Spouse should make the allocations on supplemental Forms 709 for Year. The forms should be filed with the Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the forms.

Except as expressly provided herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provision of the Code.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,
William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for section 6110 purposes